

**Re: AOR 1976-01**

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AOR 1976-1 issued as  
OC 1976-1

10 FEB 1976

OC 1976-1

Sanford Freedman, Esq.  
666 Fifth Avenue  
New York, New York 10019

Dear Mr. Freedman:

This responds to your letter of December 26, 1975, requesting an opinion from the Federal Election Commission on behalf of the Citizens Committee for The Democratic National Convention, Inc. ("Citizens Committee"). The response takes the form of an opinion of counsel, rather than an advisory opinion under 2 U.S.C. 5437f. The Supreme Court's decision in Buckley v. Valeo, 44 U.S.L.W. 4127 (U.S. January 30, 1976), held that the Commission as presently constituted has no authority to issue advisory opinions, although the Court stayed this part of its judgment "for a period not to exceed 30 days," from the date of its decision. The Commission has, however, determined that it will not issue further advisory opinions at this time.

Your letter states that the Citizens Committee, incorporated pursuant to the New York Not-For-Profit Corporation Law, has been formed, pursuant to designation by the Mayor of the City of New York, "to act as a non-partisan host committee to delegates, alternates, members of the press and others attending the 1976 Democratic National Convention in the City of New York." <sup>1/</sup>

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<sup>1/</sup> Certificate of Incorporation of "Citizens Committee for the Democratic National Convention, Inc." Under Section 402 of the [New York] Not-For-Profit Corporation Law §3(a) (on file with the Federal Election Commission).

Your request is directed at the propriety of the receipt of certain donations by the Citizens Committee and at the obligation of the Citizens Committee to report its financial transactions.

The request poses three specific questions, namely:

(1) Whether donations to the Citizens Committee by corporations engaged at the retail level in the business of supplying consumer goods or services to the public in New York City would constitute a violation of 18 U.S.C. §610.

(2) Whether donations of funds, services, or office or other space to the Citizens Committee, by corporations located in New York City, but not engaged at the retail level in the business of supplying consumer goods or services to the public, would constitute a violation of 18 U.S.C. §610.

(3) Whether the Citizens Committee is required to register with and report to the Commission pursuant to 2 U.S.C. §§433 and 434 as if it were a political committee.

There appears little point in any detailed discussion of whether 18 U.S.C. §610 reaches the "donations" described in questions one and two. From its inception the Commission has been of the opinion that the "in connection with" language of 18 U.S.C. §610 encompasses such donations even though the donor's purpose is not necessarily to influence the outcome of a Federal election. <sup>1a/</sup> Obviously, the Democratic National Convention is the sine qua non of each of the donations discussed in AOR 1976-1. Because, however, the Commission has drawn certain narrow distinctions with respect to transactions in connection with national political conventions, each question will be answered separately.

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<sup>1a/</sup> See Advisory Opinion 1975-1(a) n.1 (40 FR 29792).

(a) Donations by local retail businesses

In Advisory Opinion 1975-1 (40 FR 29792) the Commission ruled that "local corporations which are engaged at the retail level in the business of supplying consumer goods or services to the public may contribute funds to a local civic association, business league, Chamber of Commerce, real estate board, or board of trade (1) not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual, and (2) a principal objective of which is the encouragement of that commerce which is necessarily entailed in the arrival of any major convention in the city where such local corporations are located. Such contributions must be made in the reasonable expectation of a commensurate commercial return during the life of the convention."

The Citizens Committee appears to be one of the types of organizations described in AO 1975-1. It is, therefore, my opinion that the receipt by the Citizens Committee of donations by local retail businesses will not violate 18 U.S.C. §610 so long as the above guidelines are adhered to.

(b) Donations by non-retail business.

The Citizens Committee request under this heading would appear at first blush to invite a departure from the Commission's ruling with respect to corporate donations in Advisory Opinion 1975-1. In the narrow factual circumstances within which this request is raised, however, I am of the view that the donations described would not involve a violation of 18 U.S.C. §610. The request states:

"in view of the Citizens Committee's stated purpose of encouraging future tourism and conventions in New York City so as to benefit the economy of the City, the Citizens Committee proposes to seek donations from corporations engaged in activities in New York City other than at the local retail level. The Citizens Committee believes that such business concerns would share in the economic benefits which would accrue in New York City as a result of its enhanced reputation as a tourist and convention center. Such donations might consist of funds or donations in-kind, e.g., office space for the Citizens Committee and/or space for non-official receptions and other activities for those visiting New York City during the 1976 convention."

Supplemental contact with Mr. Andrew Hays of the Citizens Committee has rendered the proposed applications of these funds or contributions more specific. In no event will funds or space received from non-retail New York City businesses be applied to the benefit of any candidate, delegate or political committee participating in the convention. Illustratively, the space which would be donated would be for the exclusive use of the Citizens Committee itself, and would not be within the physical confines of the convention center. I am advised that the Committee plans a huge media campaign promoting New York City, involving the provision of quantities of bunting, flags, and printed matter, such as welcoming signs and other decorative details, stretching from the City's airports into and throughout the center of the City to all of the hotels where convention-related visitors are expected to stay. The Committee in cooperation with the U.S. Department of State expects 2-3,000 foreign visitors from as many as 100 different countries to be present as observers of the convention process. Funds are accordingly necessary to assist these visitors. It seems evident to me that funds dedicated to these purposes are, although convention-occasioned, not so convention-connected as to involve the prohibitions of §610. I take the same position with respect to the Committee's wish to supply the more than 4,000 representatives of the news media with a variety of services ranging from hospitality suites to transportation to non-politically-related press conferences regarding New York City. See FEC Opinion of Counsel 1975-81, a copy of which I enclose.

To summarize my perception with respect to the application of non-retail corporate funds to support the foregoing activities, it is that they involve none of the evils Congress addressed in promulgating the prohibitions of 18 U.S.C. §610. As I note in part (c) of this opinion below, however, the Citizens Committee is under a reporting requirement pursuant to the Federal Election Campaign Act, as amended. To absolutely assure that no non-retail corporate funds described in this subpart of the opinion are applied to any purposes other than those of the type described herein, the Committee should maintain separate accounts and records with respect to the receipt and disbursement of any funds or contributions from such corporations. Any such separate records and accounts would, of course, be subject to audit. In this connection I quote approvingly from your supplemental letter of February 6 to me in which you state that:

"we believe it would be feasible to segregate general corporate contributions from other contributions to the Citizens Committee, thereby insuring that none of such general corporate contributions be used in connection with the Citizens Committee's activities directed toward the delegates, alternates, political party officials or candidates.

"The Citizens Committee has engaged an independent accounting firm to audit its books and records and, in the first instance, to establish recordkeeping systems and procedures which could provide for the categorization of donations and disbursements as described above."

In conclusion on this particular issue, lest this opinion be misread by others elsewhere in the nation, I would underscore the point that the special plight of the economies of American cities is widely recognized. Corporations have a special interest commercially in acting to revitalize the economic situation by taking advantage of the arrival in their city of an event of as much importance as a national nominating convention, and to capitalize on the presence of not only the individuals who participate in the political aspects of the convention, but as well on the presence of the many additional thousands of persons from abroad, from the press and from many other sectors of American life, as well as the spouses and families of these visitors.

(c) Requirement of host committee to report.

2 U.S.C. 5437 requires that "each committee or other organization which represents . . . any group of persons in dealing with officials of a national political party with respect to matters involving a convention held . . . to nominate a candidate for the office of President or Vice President . . . shall within 60 days following the end of the convention, file with the Federal Election Commission a full and complete financial statement, in such form and detail as it may prescribe, of the sources from which it derived its funds, and the purposes for which such funds were expended."

It is my opinion that the activities described in your request indicate that the Citizens Committee is an organization which represents a group of persons in dealing with officials of a national political party with respect to matters involving a convention held to nominate a candidate for the office of President. Your letter states that the representatives of the Citizens Committee will meet with officials of the 1976 Democratic National Convention <sup>2/</sup> to explain and coordinate the Citizens Committee's activities during the convention. This fact added to the nature of the activities described elsewhere in your letter requires the conclusion that the Citizens Committee must file a post-convention report pursuant to 2 U.S.C. §437. The Commission is in the process of adopting regulations and forms for guidance in filing such a post-convention report.

This letter is to be regarded as an opinion of counsel which the Commission has noted without objection.

Sincerely yours,

Signed: John G. Murphy, Jr.

John G. Murphy, Jr.  
General Counsel

Enclosure

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<sup>2/</sup> I consider such officials to be officials of the Democratic National Committee and thus of a "national political party."